

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

AUG - 6 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re)	
)	
Review of the Commission's Rules)	MM Docket No.97-138
regarding the main studio and)	RM-8855; RM-8856
and local public inspection files)	RM-8857; RM-8858;
of broadcast television and radio)	RM-8872
stations)	

To: The Commission

COMMENTS

These Comments in support of the proposals to amend the Commission's Rules set out in the Notice of Proposed Rule Making issued in this proceeding on May 28, 1997 ("Notice") are filed on behalf of the radio and television licensees ("Commenters") listed in Appendix A hereto.

I. Location of Main Studio

In the Notice, the Commission acknowledged that there are a number of legitimate reasons for relaxing its main studio rule which currently requires broadcast stations to have a main studio within their principal city coverage contour and it asked for comments on several alternative proposals for modification of the rule. The proposals for modification set out in the Notice are:

Proposal 1. Permit a station to locate its main studio within the principal city contour of any station licensed to its community, thereby putting all stations licensed to the same community on an equal footing.

Proposal 2. Permit a station to locate its main studio within a set number of miles from the center of the station's community of license.

Proposal 3. A combination of 1 and 2, that is a station could locate its main studio anywhere within the principal city contour or any other station licensed to its community or anywhere within a set distance from the community.

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Proposal 4. Permit a licensee that owns multiple stations in the same market to co-locate the main studio of all of its stations at a single site provided that the main studio is not more than a set distance from the center of the community of license of any of the co-located stations.

Commenters strongly endorse Proposal 2 on the grounds that this proposal corrects the major flaw in the existing rule, to wit: that the rule is not well designed to serve its primary purpose which is to ensure that the main studios are "readily accessible to community residents." As discussed below, Proposals 1 and 3 carry forward this flaw by continuing to use the location of a station's principal city contour, a factor which bears no relationship to "accessibility," to define the area within which a station may locate its main studio.

Although Commenters support Proposal 2 in the form presented by the Commission which uses a mileage standard to delineate the area in which a station may locate its main studio, Commenters believe that it would be preferable to define the area in which a station may locate its main studio in terms of minutes of "driving time under normal traffic conditions." Driving conditions vary greatly from market to market, making driving time from the center of a station's community of license a much better indicator of "accessibility" than distance in miles from the city center. A studio located only a few miles outside of a station's community of license that can only be reached via congested streets and by-ways will be much less accessible than a studio that is located several times the distance from the center of the community, but is accessible via a major commuter highway. Therefore, Commenters propose that the main studio rule be revised to provide that "a

station's main studio must be located no further than 30 minutes driving time from the center of the station's community of license under normal traffic conditions."¹

If the Commission is not persuaded that it makes more sense from the standpoint of ensuring main studio "accessibility" to specify the acceptable area in which station may locate their main studios in driving time rather than in miles, Commenters suggest 30 miles as the maximum distance that a station's main studio may be from the center of the station's community. In most markets, expressways make it possible to traverse a distance of 30 miles in under forty-five minutes. Moreover, 30 miles is a typical commuting distance. It is also a distance that most Americans will not hesitate to travel to shop, take in a movie or sports event, or go to a restaurant. Finally, it is noted that under the current main studio rule, the main studios of high powered stations can be located at least this far from the centers of their communities of license and in many cases can be located twice as far away.

Commenters agree with the Commission that a major justification for revising the main studio rule is to enable licensees that own multiple stations in a single radio market to co-locate all of their stations at a single main studio and thereby fully realize the economies of scale which the Commission's 1992

¹Commenters are aware that the Commission stated that it was not inclined to use a specified number of minutes of "normal driving time" as the measure of how far a station's main studio could be located from its community because the Commission believed that "normal driving time" was too vague a concept that would generate numerous disputes and, thus, would be administratively inefficient. Commenters submit that this is not the case, and that while "normal driving time" is not as precise a standard as a fixed number of miles it is a fairly objective standard that should not be difficult to administer, especially if it was administered with a "rule of reason" approach.

relaxation of its multiple ownership rules and the further relaxation of the multiple ownership limits in the Telecommunications Act of 1996 were intended to achieve. However, Proposal 4 which addresses the co-location of the main studios of commonly-owned stations does not allow for any greater degree of co-location than would result from adoption of Proposal 2 since Proposal 4, as proposed by the Commission, would not permit the main studio of any station in a group of commonly owned stations to be located more than a specified distance from the center of the station's community of license.² Therefore, for clarity and simplicity Commenters support Proposal 2 rather than Proposal 4.

Commenters do not support Proposals 1 or 3 because both of these Proposals carry forward the central flaw in the existing multiple ownership rule which is that the delineation of the area in which a station's main studio may be located would be tied to a factor which bears no relationship to whether the studio will be accessible to residents of the station's community. Commenters strongly oppose Proposal 1 as adoption of this proposal would not only carry forward the flaw in the existing rule, but it would afford no relief to multi-station owners such as several of the Commenters who own stations which are the only ones licensed to their communities. Adoption of Proposal 1 would have the unfair

²Multiple station owners could be afforded the fullest benefit of the economies of scale of multiple ownership if they were permitted to co-locate the main studios of all the stations that they own in a single market without regard to the distance of the main studio from the communities of license of the individual stations. However, this approach would suffer from the same flaw as the current rule in that the standard for determining whether a station's main studio was "accessible" to the residents of the station's community would be based upon a factor, the definition of a "market," that has nothing to do with accessibility.

and anomalous result of allowing licensees of low power stations that are licensed to communities which also have one or more high power stations to locate their main studios at great distances from their communities whether or not the studio is co-located with that of another commonly owned station while it would preclude Commenter Silverado Broadcasting Company from co-locating the main studio of Station KMIX which is the only station licensed to Tracy, California, at the studio complex of the three other stations that the company owns in the Stockton, California radio market which is only 14 miles from Tracy and it would preclude Commenter Armak Broadcasters, Inc. from co-locating the main studio for Station KRQT, Castle Rock, Washington, which is the only station licensed to that community with the main studio of commonly-owned Station KBAM, Longview, Washington, which is only 8 miles from Castle Rock.³

II. Public Inspection File.

A. Location of Public Inspection File.

Commenters strongly support the Commission's proposal to modify the public inspection file rule to permit stations to maintain their public inspection files at their main studios even when their main studios are located outside their communities of license. The most practical and logical location for a station's public inspection file is at the station's main studio, wherever located, for a number of reasons.

³Silverado and Armak were participants in the Apex petition which prompted the Commission to initiate the rule making proceeding to consider relaxation of the main studio rule and their inability under the current rule to consolidate all of their broadcast operations in a single market was used to illustrate the problems and inconsistencies of the current rule.

First, members of the public interested in inspecting a station's public file will almost always travel to the station's main studio location and ask to see the file without calling in advance to inquire as to where the station's public file is located. Therefore, the current rule which requires stations with main studios outside their community of license to maintain their public file at a location within their community of license is a disservice to the public, as members of the public often will make a useless trip to the station's main studio only to learn that the public file is not located there.

Second, where public files are maintained at locations other than a station's main studio, the custodians of the public file typically are unfamiliar with the contents of the file and, thus, are unable to answer questions concerning the documents in the file or whether documents are missing from the file, and are unable to assist members of the public in locating information that they are seeking. In contrast, if the public file is maintained at a station's main studio, there will always be someone available to answer questions about the documents in the file, to find missing documents and to assist members of the public in finding the particular information that they are seeking.

Third, when the public file is located at a site other than the station's main studio, it is more likely that documents sent to the custodian of the file will not promptly be placed in the file and that documents will be lost or misplaced.

Finally, the requirement that stations maintain their public file in their community of license requires owners of multiple stations that are licensed to different communities in the same

market to maintain multiple public files even in cases where the stations' main studios all may properly be co-located.

For the foregoing reasons, it is clear that the public will benefit directly from a revision of the public file rule to require that all station's maintain their public files at their main studios wherever located.

B. Public File Contents.

In the Notice, the Commission asked for comments on specific proposals that it advanced for the elimination of certain public file requirements and "any similar revisions that would serve to update or clarify the public inspection file rules." Commenters support the specific proposals for updating the public file rules set out at paragraph 24 of the Notice. In addition Commenters propose elimination of the requirement that the classes of "contracts" listed below be kept in a station's public file:⁴

- TV Network Affiliation Agreements. These agreements are fairly standardized for each network, and even among networks, with the only information that is not standard being the terms of network compensation. The Commission does not review these agreements when filed and there is nothing in them that would be of value to the public in helping the Commission discharge its regulatory functions, unless an agreement were to contain provisions violative of Section 73.658. The Commission decided

⁴Paragraph (a)(3) of the public inspection file rule, Section 73.3526(a)(3), requires that licensees place in their public inspection files all "contracts listed in [ownership reports] in accordance with the provisions of §73.3615(a)(4)(i)" Section 73.3615(a)(4)(i) refers to contracts filed pursuant to Section 73.3613. Accordingly, in proposing that elimination of the requirement that the classes of "contracts" discussed herein be kept in a station's public file, Commenters are also proposing elimination of the requirement that these classes of "contracts" be filed with the Commission.

many years ago that it did not need to require AM and FM stations to file affiliation agreements in order to ensure that they complied with the rule provisions relating to network practices, and there is no apparent reason why TV stations should be treated differently. Accordingly, Commenters propose that the requirements that TV network affiliation agreements be filed with the Commission and placed in a station's public files be eliminated.

- Contracts relating to ownership or control. Section 73.3613(b) requires licensees to file a wide variety of "ownership" documents, including, articles of organization, by-laws, trust agreements, agreements relating to the future ownership of a station (e.g., options, pledge agreements, debentures convertible into stock, purchase agreements which are not filed as part of an assignment or transfer application within 30 days of execution, certain proxies) and certain mortgage/loan agreements. The Commission long ago abolished the requirement that applicants for new stations or for consent to acquire stations file their organizational documents as part of their applications. It is at the time of filing that organizational documents and other documents relating to ownership might be of some use to the Commission or the public (for example, reviewing the organizational documents might disclose that control of the entity is not as shown in the application). Purchase Agreements are only relevant if and when an assignment or transfer application is filed, at which time such agreements are required to be submitted with the application. Option agreements are only relevant when the option is exercised, at which point a purchase agreement implementing the option sale will be filed with an application. Debentures convertible into

stock are only relevant at the time they are converted. If at the time of conversion a transfer of control will result the licensee is required to file a transfer application which will set out the relevant information. If conversion of a debenture does not result in a transfer of control, the relevant information will be filed with the Commission in the station's next ownership report. As for proxies, they are only relevant if they effect control, and if they effect control, they should be filed with an appropriate transfer application. As for mortgage and loan agreements, if these agreements are not extant at the time of an assignment or transfer, they are never reviewed by the Commission, and the agreements that are filed with assignment and transfer applications are never found by the Commission's staff to present any problems, regardless of how restrictive they might be on the theory that the licensee can always avoid the restrictions on its discretion by paying off the loan.

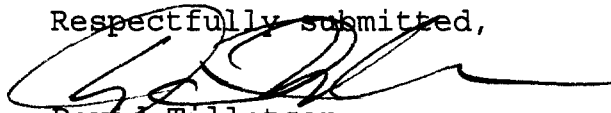
Accordingly, Commenters propose that the requirement that the classes of documents referred to in Section 73.3613(b) of the Rules be filed with the Commission, and the related requirement that these documents be kept in a station's public file, be eliminated as the requirements serve no valid regulatory purpose, are burdensome to licensees both from the standpoint of copying and storage and are burdensome to the Commission from the standpoint of storage.⁵

⁵Every document filed pursuant to Section 73.3613 must be kept in a station's public file for seven years. That means that licensees with multiple stations must make multiple copies of every document filed pursuant to the section. Some of the documents can run scores, or even hundreds of pages. The Commission must devote shelf space to storing these documents. Because the Commission's on site shelf space is quite limited, documents that have been on file for only a few years are

C. Responsibility for Maintaining Public File Materials of Former Licensees.

In the Notice the Commission requested comments on a proposal that it eliminate the obligation that the current public file rule imposes on assignees of station licenses to ensure that the station's public file contains all documents that the former licensee was required to place in the file. Commenters strongly support elimination of this obligation. Information as to the ownership, EEO practices, and programming of former owners of stations is of no conceivable interest or use to members of the public, and it is difficult, costly, and often impossible, for new owners to obtain copies of public file documents that former owners were required to place in a station's public file which are missing when the new owner acquires the station. Commenters agree with the Commission that in so far as the public file rules require a station's public file to contain documents such as facilities modification applications that are not licensee specific, assignees should continue to have the obligation of ensuring that copies of such documents are in their stations public files.

Respectfully submitted,



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*Attorney for the Commenters listed
in the Appendix hereto*

Dated: August 6, 1997.

shipped to off sight storage in Suitland or elsewhere making them relatively inaccessible to the public or the Commission, should anyone care to look at them.

APPENDIX

These Comments are submitted on behalf of the following licensees:

Armak Broadcasters, Inc. which is the licensee of Stations KBAM(AM) and KRQT(FM), Longview/Castle Rock, WA

Starview Media, Inc. which is the licensee of the following stations:

WJUN-AM/FM, Mexico, PA
WWBV(FM), Beaver Springs, PA
WZZM(FM), Corinth, NY
WMJR(FM), Hudson Falls, NY
WBZA(AM), Glens Falls, NY

Bradmark Communications, LLC, licensee of Station

WSRQ(FM), Queensbury, NY
WENU(FM), Hudson Falls, NY
WSTL(AM), Glens Falls, NY

Real Rock Radio, LLC, Mountain View Broadcasting, Inc. and Conn. Valley Radio, LLC which are under common control and are the licensees of the following stations:

WVRR(FM), Newport, NH
WXXK(FM), Lebanon, NH
WTSL(AM), Hanover, NH
WGXL(FM), Hanover, NH

Silverado Broadcasting Company is the licensee of the following stations:

KMIX(FM), Tracy, CA
KWG(AM), Stockton, CA
KCVR(AM), Lodi, CA
KWIN(FM), Lodi, CA
KWNN(FM), Turlock, CA
KCDR(AM), Turlock, CA
KSQR(AM), Sacramento, CA
KTDQ(FM), Columbia, CA
KLOC(AM), Ceres, CA

Michael B. Gliner who is the licensee or permittee of the following stations:

WASG(AM), Atmore, AL
WZEW(FM), East Brewton, AL
WZNO(AM), Pensacola, FL
WNVY(AM), Cantonment, FL (acquisition approved but not yet closed)
WBAJ(AM), Blythwood, SC

Second Generation of Florida Ltd., licensee of Station WTVK(TV), Naples, Florida.

Dolphin Broadcasting, Inc. which is the licensee of Station KUIK(AM), Hillsboro, OR and Dolphin Radio, Inc. which are under common control with Dolphin Communications, Inc. and is the proposed assignee of the following stations:

KSWB(AM), Seaside, OR
KVAS(AM), Astoria, OR
KKEE(FM), Long Beach, WA

Gold Coast Radio, LLC, licensee of Station KMLA(FM), El Rio, California.